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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 97-208, Application By BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. For Provision Of In-Region, InterLATA Services in South Carolina

Dear Mr. Caton:

Enclosed please find an original and eleven[1] copies of Sprint Communications Company L.P.'s "Petition to Deny" concerning the above-referenced Application. In addition to the original and eleven copies, we also attach a diskette version of the filing formatted in WordPerfect 5.1 (read-only).

If you have any questions concerning this filing, please contact the undersigned.

Sincerely,

Thomas Jones
Counsel for Sprint Communications Company L.P.

Attachments

No. of Copies rec'd 0 + 11
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[1] The eleven copies are calculated as follows: six mandatory copies, and five copies for the Policy and Program Planning Division.

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services to South Carolina	)	CC Docket No. 97-208

PETITION TO DENY OF SPRINT COMMUNICATIONS COMPANY L.P.

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Dated: October 20, 1997

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PETITION TO DENY OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby petitions the Commission to deny the above-captioned application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.

INTRODUCTION AND SUMMARY

BellSouth's application fails by its own admission to meet Section 271's requirements for full checklist compliance. Having found the Commission's interpretation of a number of Section 271 issues either inconvenient or unattractive, BellSouth has chosen simply to flaunt them. BellSouth is of course within its rights to seek legal redress at the FCC and in the Courts, but it cannot expect the FCC to consider favorably an application which is facially defective. The application can accordingly be summarily dismissed, as AT&T and LCI have requested.

To the extent that the Commission chooses to use this application as another opportunity to give guidance under Section 271, it should clearly announce that Track B is unavailable to

BOCs who fail to adequately accommodate requests for access and interconnection under Track A. While Sprint is not so naive as to believe that the legal gamesmanship will stop, the Commission can at least act to curtail some of the worst of it. Track B is not a reward for BOCs which have flaunted their Track A responsibilities. And as discussed in detail below, the record accrued in the South Carolina proceeding is not in fact inconsistent with this view.

Regardless of Track A or Track B, the Commission can and should consider the wide range of operational problems that have arisen throughout the BellSouth territory. BellSouth's failure to provide the prerequisites for economic entry in Florida, for example, has forced Sprint to lodge a complaint with the PSC there, as explained in the attached affidavit of Melissa Closz, Sprint's Director of Local Market Development for the BellSouth region. Other CLECs have had equally unavailing experiences with BellSouth. Whether viewed as Track A checklist compliance, Track B compliance or part of the public interest analysis, BellSouth's actions establishing its hostility to competitive entry remains highly relevant to the Commission's assessment. The full public policy implications of Section 271, as applied specifically to this application, are also addressed in the attached paper by Professor Carl Shapiro.

BellSouth would not only have the Commission essentially forsake the prospects of local competition in South Carolina, it would do so at the risk of substantially diminishing the gains to

consumers which long distance competition has brought. BellSouth tries unsuccessfully to mask the dramatically adverse public interest implications of its proposal by portraying a distorted view of the interLATA market. As explicated in the attached paper by Marybeth Banks, BellSouth's projections of competitive benefits and consumer welfare for the interLATA market are incorrect. It is the premature entry of BellSouth -- and not the denial of its application -- that threatens the competitive efficiency of the interLATA market.

BellSouth seeks entry into the competitive long distance market long before it has taken the requisite steps to open up its monopoly lock on the local telephone market. Both market and regulatory conditions demonstrably exist such that the dangers of discrimination and cross-subsidization which led to the interLATA restriction ab initio persist. To allow BOC entry under such conditions would create both ratepayer and competitive harm at odds with the fundamental objectives of the 1996 Telecommunications Act.

I. BELLSOUTH'S APPLICATION IS INSUFFICIENT ON ITS FACE TO MEET THE REQUIREMENTS OF 271(c)(2), THE COMPETITIVE CHECKLIST.

Section 271(c)(2) requires that a BOC applicant meet "each" of the checklist requirements regardless of whether its application is reviewed under Track A or Track B.[1] The failure

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[1] Under Track A, a BOC must "provide" all of the checklist services while under Track B the BOC must "offer" each of the checklist services. See 47 U.S.C. § 271(c)(2).

to provide *any* checklist item is fatal to a Section 271 application. As explained below, BellSouth has clearly failed to meet several checklist requirements. Based on this fact alone, the Commission should reject this application.

A. The Commission Has The Authority Under Track A Or B To Review Checklist Compliance De Novo In Light Of The BOC's Performance Under Interconnection Agreements.

Section 271(c)(2) requires that a BOC either be providing access and interconnection pursuant to interconnection agreements (Track A) or be generally offering access and interconnection pursuant to an approved SGAT (Track B) *and* that the access and interconnection meet the requirements of the checklist.[2] Section 271(d)(3) requires that the Commission find that these requirements have been met as a condition to granting Section 271 approval.[3] Thus, the Commission is obligated to find that access and interconnection are being provided or offered by the BOC. The statute also places an independent obligation on the Commission to find that such provision/offer complies with the requirements of the checklist.

In its brief, BellSouth argues that the Commission should give deference to the SCPSC's decision approving BellSouth's SGAT.[4] This is incorrect both as a matter of law and policy. While the Commission is required to consult with a state on

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2 See 47 U.S.C. § 271(c)(2)(A).

3 See 47 U.S.C. § 271(d)(3).

4 See Br. at 18.

checklist compliance issues, it is not obligated to defer to state commission findings.[5] As the Commission explained in the Michigan Order, the statute does not include a standard pursuant to which the FCC must review state findings in Section 271 proceedings. The Commission, therefore, will grant state findings the deference they are due. As the Commission explained,

> The Commission, therefore, has discretion in each section 271 proceeding to determine what deference the Commission should accord to the state commission's verification in light of the nature and extent of state proceedings to develop a complete record concerning the applicant's compliance with section 271 and the status of local competition.[6]

Thus, regardless of whether a BOC is pursuing Track A or B, the Commission has the independent obligation to make determinations of checklist compliance, and further, it has the authority to determine whether or not to grant any deference to any conclusions reached by the state on these issues.

It follows that issues of fact that are granted inadequate attention at the state level can be considered *de novo* by the FCC. For example, the SCPSC found that complaints regarding inadequate compliance with interconnection agreements by BellSouth were irrelevant to its review of the BellSouth SGAT in

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5 See 47 U.S.C. § 271(d)(2)(B).

6 In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137, *Memorandum Opinion and Order* at ¶ 30 (released Aug. 19, 1997) ("Michigan Order").

particular or the BellSouth Section 271 application more generally.[7] But this is simply not so.

Even if BellSouth's application were eligible for consideration under Track B, the FCC would not be required to look only at the terms of the SGAT to determine whether checklist compliance has been achieved. Nothing in the statute supports such an interpretation. The Commission has interpreted Section 271(c) to require a BOC to "provide" (either furnish or make available) checklist items through interconnection agreements under Track A and to "offer" checklist items in an SGAT under Track B.[8] But this does not mean that, in exercising its independent authority to judge whether the offerings in the SGAT can support local competition in the future, the Commission cannot consider actual commercial experience. Indeed, as Congress was no doubt aware, in every Track B state, there is likely to be some commercial experience with checklist items like resale that, even if ordered, are not sufficient to trigger

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7 See In re: Entry of BellSouth Telecommunications, Inc., into InterLATA Toll Market, SCPSC Docket No. 97-101-C, *Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996* at 30-31 (released July 31, 1997) ("The test that BST must meet is not whether BST satisfied every condition of a private arbitration agreement with AT&T. Rather, BST must show that it has made interconnection generally available to CLECs, as required by Section 252(f)."); ("SGAT Order"); id. at 50 (stating that AT&T witness Hamman's complaint that BellSouth had failed to provide route indexing interim number portability "confuses BST's obligation to comply with a checklist item with BST's contractual commitments to AT&T").

8 See Michigan Order at ¶¶ 110-115.

consideration under Track A. Moreover, as is the case with BellSouth, where a BOC uses essentially the same OSS across its region, experience in other states is helpful in determining whether the BOCs' SGAT complies with the checklist. Indeed, BellSouth itself relies on its experience providing checklist items to CLECs pursuant to interconnection agreements in South Carolina and throughout its region while at the same time arguing that it is eligible for Track B.[9] Unfortunately for BellSouth, the actual experience in the market demonstrates that it has not come close to meeting the requirements of the checklist, thus rendering academic the question of whether the application should be considered under Track A or B.

B. BellSouth Openly Refuses To Offer Contract Service Arrangements For Resale.

As AT&T and LCI have already demonstrated in their jointly filed Motion to Dismiss,[10] BellSouth has not even attempted to

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9 See Br. at 19 ("through actual commercial usage in South Carolina and its other in-region States as well as thorough testing, BellSouth has accumulated extensive evidence regarding its ability to furnish [checklist] items in compliance with the Act"); SGAT Order at 45 ("While no CLEC has yet ordered unbundled switch ports in South Carolina from BST, BST had 26 unbundled switch ports in service as of June 17, 1997, thus evidencing the functional availability of unbundled local switching from BST.").

10 See Motion of AT&T Corp. And LCI International Telecom Corp. To Dismiss BellSouth's 271 Application For South Carolina, CC Docket No. 97-208 (Oct. 1, 1997) ("AT&T/LCI Motion To Dismiss").

meet the checklist requirements for resale.[11] Sprint supports the AT&T/LCI Motion and respectfully requests the Commission to dismiss BellSouth's facially deficient application expeditiously. Expeditious resolution of this application would conserve resources of the Commission, the Department of Justice and private parties. It would also send a clear message that BOC compliance with the Commission's Section 271 rules is not optional, as BellSouth apparently believes, but a mandatory part of establishing a *prima facie* case in a Section 271 proceeding.

Rather than reargue at length the issues raised by the movants, Sprint briefly explains its reasons for supporting the Motion. As AT&T and LCI explain, BellSouth does not comply with the checklist requirement that it make telecommunications services available for resale in accordance with Sections 251(c)(4) and 252(d)(3). The Commission has stated that the obligation to provide all telecommunications services for resale at a wholesale discount includes contract arrangements including

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[11] AT&T and LCI also argue that BellSouth has failed to provide UNEs in accordance with the FCC's rules. They specifically point out that BellSouth refuses to permit requesting carriers to purchase UNEs on a pre-combined basis or as a "platform" to enable CLECs to provide finished services. See AT&T/LCI Motion to Dismiss at 8-10. This issue would seem, however, to have been resolved as a checklist (but not a public interest) issue by the Eighth Circuit's recent decision vacating Section 51.315(b) of the FCC's rules which prohibited an ILEC from separating UNEs that it combines in its own network. See Iowa Utils. Bd. v. FCC, Docket Nos. 96-3321 et al., Order on Petitions for Rehearing (8th Cir. Oct. 14, 1997).

volume-based discounts.[12] BellSouth, however, states in its Brief that contract service arrangements "are available for resale at the same rates, terms, and conditions offered to BellSouth's end user customers,"[13] a position that is reflected in its SGAT.[14] BellSouth has therefore openly violated the resale checklist requirement.[15]

C. BellSouth Does Not Provide OSS In Accordance With The Commission's Rules.

While Sprint does not have experience with BellSouth's operational support systems ("OSS") in South Carolina, it is clear from the state record and the representations made by BellSouth in support of the instant application that it is not close to complying with the Commission's requirements. Moreover, Sprint's experience in Florida confirms this fact with regard to OSS required to support unbundled loops.

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12 See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, *First Report and Order* at ¶¶ 948, 951 (1996) ("Local Competition Order").

13 Br. at 53.

14 See Statement of Generally Available Terms and Conditions for Interconnection, Unbundling and Resale Provided by BellSouth Telecommunications, Inc. in the State of South Carolina at § XIV.B (Sept. 19, 1997) ("SGAT").

15 AT&T and LCI also correctly point out in their motion that BellSouth's insistence that contract offerings be resold only to those for whom the contract service arrangement was originally developed (a limitation inapplicable to BellSouth) is a discriminatory condition on resale in violation of Section 251(c)(4)(B). See AT&T/LCI Motion To Dismiss at 17-18.

1. BellSouth's OSS Offerings Are Deficient On Their Face.

Several deficiencies in BellSouth's OSS offering are obvious. First, the Commission has held that BOCs must offer electronic OSS interfaces for UNEs.[16] BellSouth has not, however, developed interfaces for several UNEs. In addition, the interfaces that BellSouth has introduced thus far have not been fully deployed and tested, and are interim in nature.[17]

Other interfaces were also unavailable as of the filing of the instant application. BellSouth's OSS expert William Stacy states that "[m]echanized service order generation for the main UNEs (loop, port, INP, loop+INP) will be available as of October 6, 1997."[18] Until then, those UNE orders were to be manually entered at BellSouth's local carrier service center.[19] But as the Commission held in the Michigan Order, a Section 271 application must be complete when filed[20] and promises of future

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16 See Local Competition Order at 256 n.1274 and accompanying discussion.

17 See Closz Aff. at ¶ 46. It is imperative that these interim measures be made permanent in accordance with industry standards. The current and future lack of OSS measures that are consistent across ILEC networks acts as a significant barrier to entry, requiring a CLEC to develop different interfaces for each network with which it intends to interconnect. See id. at ¶ 52.

18 Stacy OSS Aff. at ¶ 58; see Closz Aff. at ¶ 41.

19 See Stacy OSS Aff. at ¶¶ 58-59.

20 See Michigan Order at ¶¶ 50-51.

performance will be accorded no probative value.[21] Thus, for the purposes of this application, filed on September 30, 1997, BellSouth has no electronic interfaces for basic UNEs.

Second, the Commission has held that BOC compliance with arbitrated performance measurements is highly relevant to whether non-discriminatory access to OSS is being provided.[22] Yet, BellSouth has not developed performance measures and benchmarks.[23] For example, as William Stacy states, "BellSouth is working to standardize the RNS [BellSouth's retail OSS] and LENS data collection criteria and measurement" for response intervals.[24] In other words, there is apparently no reliable basis upon which to compare the response times for CLEC and BellSouth preordering. Moreover, BellSouth offers no evidence

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21 See Id. at ¶ 55.

22 See id. at ¶¶ 141-142 ("[W]e will, in the first instance, examine whether specific performance standards exist for those functions. . . . [E]vidence showing that a BOC is satisfying the performance standards contained in its interconnection agreements does not necessarily demonstrate compliance with the statutory standard. . . . [T]he Commission must also find that those performance standards embody the statutorily-mandated nondiscrimination standard.")

23 These terms are used as defined by the Justice Departments in the Addendum to its Evaluation of the SBC Section 271 Application for Oklahoma. See Justice Department Addendum, CC Docket No. 97-121 at 4-5 ("a 'performance benchmark' is a level of performance to which regulators and competitors will be able to hold a BOC;" "performance measures" are the "specific means and mechanisms necessary to measure [the BOC's] performance").

24 Stacy OSS Aff. at ¶ 109.

that it has established performance measures or benchmarks for other aspects of OSS.

Third, on a more general level, the Commission requires that, for OSS functions provided to CLECs that are analogous to the OSS function that a BOC provides itself, the BOC must provide OSS access that is "equal to the level of access that the BOC provides to itself . . . ."[25] BellSouth's Local Exchange Navigation System ("LENS") interface for preordering fails this standard. LENS is used for preordering, among other things, resale service (for which there is a BOC analogue retail service).

LENS is not a "machine-to-machine" (or "application-to-application") interface.[26] In other words, CLEC customer service representatives must input preordering information into the BellSouth OSS via LENS.[27] The customer service representative must then duplicate the same process for the CLEC OSS.[28] In a machine-to-machine interface, the CLEC customer service representative would input preordering information once, into the CLEC OSS. The CLEC OSS would then automatically and seamlessly deliver the information to the BOC OSS. As the Justice Department found in the SBC Oklahoma Section 271 proceeding,

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25 Michigan Order at ¶ 139.

26 See Stacy OSS Aff. at ¶ 42; Closz Aff. at ¶¶ 44, 50.

27 See Closz Aff. at ¶ 50.

28 See id.

requiring the CLEC to input information twice while requiring only one such transaction for the BOC "would place a competitor at a significant disadvantage."[29] BellSouth is only now developing a machine-to-machine interface for preordering with AT&T.[30] This level of development cannot meet the Commission's requirements for parity of OSS.

Indeed, the requirement that BOCs provide CLECs with equal access to OSS is also violated by BellSouth's failure to offer an integrated preordering and ordering electronic interface. A CLEC can only purchase these services on an integrated basis if it uses LENS for ordering.[31] However, this choice would make little sense since BellSouth offers the industry standard EDI interface for ordering, and the LENS ordering interface "is limited to a subset of the order types and activity types provided by the EDI interface."[32] Although integrated preordering and ordering is not available to CLECs, the functionalities are available on an integrated basis to BellSouth customer service representatives.[33]

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29 See DOJ Oklahoma Br., App A. at 75 (explaining that "unlike SBC's retail operations, a competing carrier with its own separate OSSs is forced to manually enter information twice -- once into the SBC interface and a second time into its own OSSs. For high volumes of orders, such double entry would place a competitor at a significant disadvantage by introducing additional costs, delays, and significant human error.").

30 See Stacy OSS Aff. at ¶ 42.

31 See id. at ¶ 61.

32 See id. at ¶ 56.

33 See Closz Aff. at ¶ 51.

BellSouth's OSS therefore impermissibly discriminates against CLECs by requiring them to input data in separate form for ordering and preordering.[34] To aggravate the situation, the EDI interface itself is flawed and requires manual intervention by both the CLEC and BellSouth for both simple and complex orders.[35]

LENS also does not enable CLECs to obtain electronic access to Customer Service Record ("CSR") information on a non-discriminatory basis. While BellSouth can review and print a customer's record with ease and in its entirety, CLECs may only print the first 50 pages of a customer's record electronically.[36] Beyond that, the CLEC must contact BellSouth's Local Carrier Service Center ("LCSC") to obtain the additional pages of the record.[37] While this limitation may be acceptable for residential service, where CSRs are normally one or two pages long, it is unacceptable for business service, where CSRs can exceed 50 pages in length.

LENS contains a litany of other material differences from BellSouth's own pre-ordering system that make competing with the incumbent that much more difficult for a CLEC. These additional deficiencies include the following: (1) LENS does not provide

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34 See id. ("[T]he EDI interface is not integrated with an electronic interface for pre-ordering functions.")

35 See id. at ¶ 51.

36 See id. at ¶ 23.

37 See id.

the functionality for a CLEC to issue a change order to BellSouth -- such functionality is still under development;[38] (2) LENS does not permit a CLEC to electronically change the features on a customer's current service;[39] (3) LENS does not provide a CLEC with the same "on-line, front-end" edits[40] available to BellSouth.

Finally, BellSouth does not provide its Trouble Analysis and Facilities Interface ("TAFI") on a non-discriminatory basis. BellSouth has identified this interface as the appropriate one to submit problems associated with UNEs. For a CLEC, however, this interface is the functional equivalent of "sending a facsimile transmission," since it results in BellSouth employees retrieving the information, and then manually entering it into BellSouth's own system.[41]

2. Sprint's Experience In Florida Shows That BellSouth's OSS Systems For Unbundled Loop Offerings Cannot Support Viable CLEC Entry

BellSouth states that no carrier has actually requested any unbundled loops in South Carolina.[42] BellSouth asserts, however,

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38 See id. at ¶ 28.

39 See id. at ¶ 29.

40 See id. at ¶ 32. This function checks for errors in pre-order information in order to prevent an erroneous order from being submitted to BellSouth, thus causing order and service delay to the CLEC and its customer.

41 Closz Aff. at ¶ 33.

42 See Br. at 42; Milner Aff. at ¶ 37.

that it had provisioned 2,654 unbundled loops elsewhere in its nine state region by June 1[43] and that it uses the same OSS systems across its region.[44] BellSouth further claims that at least 98 percent of its unbundled loops have been cut-over to CLECs within 15 minutes. The BOC claims that this track record demonstrates compliance with the unbundled loop checklist obligation. As mentioned, the SCPSC relied on these representations in finding that BellSouth had met its obligation to provide unbundled loops.[45]

Like so much else in the BellSouth application, these assertions are misleading. As an initial matter, BellSouth's claim that it cuts-over unbundled loops 98 percent of the time within 15 minutes is based on a limited study of cutover results for *one* CLEC in Georgia.[46] Moreover, Sprint's experience in Florida has been that BellSouth's systems for provisioning unbundled loops are anything but reliable. Sprint recently filed a complaint with the Florida Public Service Commission seeking

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43 See Br. at 42. BellSouth also states that it had provisioned 4,316 unbundled loops by August 1. See Br. at 42; Milner Aff. at ¶ 37.

44 See Br. at 35 ("BellSouth uses the same processes with respect to checklist items in all of its nine states . . . .").

45 See SGAT Order at 42.

46 See Milner Aff. at ¶ 41.

redress of the problems it has experienced with BellSouth's unbundled loops.[47]

Sprint has experienced problems in virtually all phases of the customer activation (or "cutover") process for unbundled loops.[48] For example, BellSouth has regularly missed its commitment to notify Sprint within 48 hours of an order's receipt if there is a problem with the order.[49] These delays have frequently caused loop installations to be postponed and have caused Sprint to miss due date commitments made to its customers. In some cases, BellSouth has been unable to cancel disconnect orders for Sprint customers while BellSouth works on problems with its cut-over process. The result is that Sprint customers are left with no service at all. Furthermore, in at least two cases, BellSouth spent *months* sorting out the problems with its cutover process before Sprint's local customer received service from Sprint.

Sprint has also experienced problems with BellSouth after loops have been cut-over.[50] BellSouth has been unable to provide

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47 The complaint filed with the Florida Commission is attached as an Appendix.

48 See Closz Aff. at ¶¶ 64-84. In addition to OSS, the Closz Affidavit describes problems Sprint has had with BellSouth's interim number portability service in Florida. See id. at ¶¶ 85-96

49 See Closz Aff. at ¶ 64 (describing by month the percentage of notifications received outside the 48-hour window as varying between 40 and 95 percent between April and September, 1997).

50 See id. at ¶ 84.

accurate bills to Sprint for the purchase of unbundled loops. Rate elements have been repeatedly misapplied on bills, requiring Sprint to request adjustments in the bill every month. In addition, BellSouth has in some cases provided fewer loops to a particular customer than Sprint has requested. Sprint customers have also experienced interruptions and degradation in service caused by problems in BellSouth's network.

In sum, BellSouth's systems for unbundled loop offerings are simply insufficient to provide Sprint a meaningful opportunity to compete in the local market in Florida. This experience provides a revealing insight into just how far BellSouth is from complying with its statutory obligations.[51]

D. BellSouth's Rates For Checklist Items Do Not Comply With The Commission's Pricing Rules.

In the Michigan Order, the Commission stated that "efficient competitor entry into the local market is vitally dependent upon appropriate pricing of the checklist items."[52] The Commission therefore established specific pricing rules as a checklist

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51 ACSI testified before the SCPSC that it has had similar problems in Georgia with BellSouth's unbundled loop provisioning systems. See Brief of American Communications Services, Inc. at 6-7, 9 filed in SCPSC Docket No. 97-101-C (July 22, 1997). Falvey Test., SCPSC Vol. 7 at 334-339. As James Falvey testified before the SCPSC, in response to the problems experienced with BellSouth's unbundled loops offering in Georgia, "ACSI held back orders to protect its reputation. . . . Each day of delay in having unbundled loops installed jeopardized our ability to retain the customers we have, not to mention our ability to attract new customers." Id. at 336.

52 Michigan Order at ¶ 281.

compliance requirement. BellSouth's prices in South Carolina violate virtually every one of those rules.

1. BellSouth's Prices In South Carolina Are Not Cost-Based.

The Commission stated in the Michigan Order that BOCs must set their prices based on total element long run incremental cost ("TELRIC") in order to meet the checklist requirements.[53] However, the prices BellSouth has included in its SGAT and its interconnection agreements, where they exist at all, have been set without regard to the cost of providing service in South Carolina. No BOC should be considered eligible for interLATA entry under such circumstances.

First, as BellSouth openly admits, it does not have *any* prices at all for OSS in its SGAT.[54] The prices the SGAT does contain are not based on TELRIC. Instead, the rates have been derived from the FCC proxy rates, private negotiations between BellSouth and CLECs (primarily AT&T and ACSI) and existing BellSouth tariffs.[55]

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53 See Michigan Order at ¶ 289 ("We conclude, therefore, that a BOC cannot be deemed in compliance with sections 271(c)(2)(B)(i), (ii) and (xiii) of the competitive checklist unless the BOC demonstrates that prices for interconnection required by section 251, unbundled network elements, and transport and termination are based on forward-looking economic costs").

54 See SGAT; Varner Aff. at ¶ 72 ("There is no charge until permanent prices are established for OSSs.")

55 BellSouth has not attempted to show that existing tariffs were set using a TELRIC methodology.

Nor are the rates in BellSouth's interconnection agreements in South Carolina based on TELRIC. The only arbitrated interconnection agreement in which the PSC could have imposed TELRIC rates was the BellSouth-AT&T agreement.[56] Rather than establish TELRIC rates in that arbitration proceeding, however, the Commission adopted interim rates based on a combination of the rates negotiated (not arbitrated) between BellSouth and ACSI and the FCC's now-overturned proxy prices.[57] Those rates will be changed to reflect the results of the SCPSC pending cost proceeding.

2. Prices In South Carolina Are Not Geographically Deaveraged.

In the Michigan Order, the Commission stated that compliance with the checklist requires a BOC to set its prices for interconnection and unbundled elements at geographically deaveraged rates.[58] As the Commission explained,

> Deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements. Deaveraging should, therefore, lead to increased competition and ensure that competitors make efficient

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56 Negotiated agreements are not subject to the cost-based pricing requirements imposed by Section 252(d). See 47 U.S.C. § 252(e)(2)(A). Sprint supports the adoption of the FCC's proxy rates as a sound first step in the ratemaking process. However, efficient entry is much more likely if rates are established based on cost. Moreover, as described below, business planning is very difficult where rates are interim.

57 See Scheye Test., SCPSC Vol. 3 at 164-165.

58 See Michigan Order at ¶ 292.